IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 30266 of 2006(C)

PETITIONER:

BABU K.H., S/O. HASSAN,
KUZHIKANDATHIL HOUSE, KOTHAPARAMBU P.O.,
KODUNGALLUR.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS:

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1. KODUNGALLUR MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, KODUNGALLUR.

2. SHRI. ABDUL KAREEM P.I., S/O. ISMAIL,
PARAMBATHUKANDI HOUSE, KOTHAPARAMBU P.O.,
KODUNGALLUR.

ADDL. 3. SAJITHA MOHAMMED ALI,
W/O. MOHAMMED ALI,
50/395-B, MANIMALA ROAD JUNCTION.
EDAPPALLY P.O.

ADDL. 4. SABIRA HABEEB,
W/O.MOHAMMED HABEEBULLA,
PUTHENCHALIL, RAJIV BAGAR ROAD,
UNICHIRA, EDAPPALLY P.O.

(ADDL R3 & R4 IMPLEADED VIDE ORDER DT.21.12.06 IN IA NO.17548/06)

R1 BY ADV. SRI.M.P.ASHOK KUMAR
R2, ADDL R3 & R4 BY ADV. SRI.SHAHUL HAMEED MOOPPAN
SRI.K.M.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/01/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 30266 OF 2006

Dated this the 24th day of January, 2007

JUDGMENT

The Municipality has filed a detailed counter affidavit to which a reply has been filed by the petitioner reiterating his contentions. Heard Sri.K.P.Dandapani, counsel for the petitioner, Sri.Shahul Hameed, counsel for the 2nd respondent and additional respondents 3 & 4 who are sisters and co-owners of the petitioner and Sri.M.P.Ashok Kumar, Standing Counsel for the Municipality. Considered the materials placed on record. In am informed that it was the petitioner who concededly inducted the 2nd respondent in to the building in his capacity as co-owner. On the basis of such induction the 2nd respondent became a statutory tenant covered by the Kerala Act (2) of 1965, and he applied for licence from the Municipality. It appears that as licence application was being processed, the petitioner sent a letter to the Municipality to the effect that he has withdrawn the consent given to the petitioner in the matter of conduct of business. The petitioner having already acquired the status of tenant in the building in question on the basis of a lease deed was entitled to do all lawful activities permitted by the licence. Additional 3rd and 4th respondents were originally opposing the idea of issuing occupancy certificate issued in favour of the petitioner by

the Municipality. They are now supporting the 2nd respondent. Obviously the period of licence already issued in favour of the 2nd respondent will expire only on 31.3.07. I do not find any infirmity with that licence. Exts.P5 and P6 are representations submitted by the petitioner that the licence already issued in favour of the 2nd respondent may not be renewed and that the construction being a semi permanent one, the same should be demolished. I am informed that a suit for partition is pending before the Sub Court, Kodungallur as OS No.231/2006.

The following are the prayers sought for by the petitioner:

i) issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent to take decision on Ext.P5 and P6 immediately;

ii) issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent not to renew the permit and licence issued in respect of the temporary shed No.XIII/619(3) constructed in the property comprised in Survey No.s.420/2, 421/2 and 3 of Lokamaleswaram Village.

Prayer No.2 is not at all to be granted in this Writ Petition. As for the first prayer since they are pending before the Municipality the Writ Petition will stand disposed of directing the Municipality to take up Exts.P5 and P6 representations after 31.3.07, hear the petitioner, 2nd respondent and additional 3rd and 4th respondents and take a decision.

Ext.R2(d) representation if the same is on file, the Municipality will dispose of that representation also simultaneously with Exts.P5 and P6.

PIUS C. KURIAKOSE, JUDGE

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